

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.24 of 2018

ORDER :

This Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act") is filed by the applicant seeking appointment of an Arbitrator for adjudication of the dispute between the applicant and the respondent in respect a registered Lease Deed bearing No.2618 of 2017, dt.04.05.2017, in respect of super built up area of 3,170 sft. on Third Floor and 3,170 sft. on Fourth Floor of a Commercial Building "Disha Banjara" constructed on Plot No.8-2-684/3/16 and 17, situated at Banjara Green Colony, Road No.12, Banjara Hills, Hyderabad.

The case of the applicant is that he is the Tenant/Lease Holder and respondent is the absolute owner and possessor of the Commercial Building, namely "Disha Banjara" consisting of Cellar, Sub-cellar, Ground, First, Second, Third and Fourth Floors, constructed on Plot No.8-2-684/3/16 and 17, situated at Banjara Green Colony, Road No.12, Banjara Hills, Hyderabad. The applicant entered into a registered Lease Deed bearing No.2618 of 2017, dt.04.05.2017 in respect of super built up area of 3,170 sft. on Third Floor and 3,170 sft. on Fourth Floor of the said building. However, due to the leakage of rain water and

unfinished fourth floor, the applicant could not start his business as per the schedule. Despite several requests made by the applicant, as the respondent did not take any steps for prevention of water leakage, the applicant got issued a Legal Notice dt.13.11.2017 to the respondent demanding to pay a sum of Rs.35,00,000/- towards damages, which include damage of the material procured for interiors, furniture and fittings, besides loss of business for not starting as per the schedule, failing which to initiate legal action. As there is no response from the respondent, the applicant has filed the present Arbitration Application invoking Clause 29 of the Lease Deed dt.04.05.2017 seeking appointment of an Arbitrator for adjudication of the dispute between the parties.

Counter affidavit is filed by the respondent denying the allegations made by the applicant, wherein it is stated that the Arbitration Application is liable to be dismissed in *limine*, as the Arbitration Clause in the Lease Deed dt.04.05.2017 categorically states that only if the parties fail to resolve the disputes by amicable arrangement, either party can refer the matter to arbitration of a common Arbitrator, if agreed upon, otherwise two Arbitrators, one being appointed by each party. It is also contended that the applicant never proposed the Arbitrator of his choice nor intimated the respondent about resolution of the dispute through arbitration. As the applicant has not nominated the Arbitrator, he has no locus standi to

file the present Arbitration Application under Section 11 of the Act and on this ground alone, the present Arbitration Application is liable to be dismissed.

No reply affidavit is filed by the applicant refuting the contents of the counter affidavit filed by the respondent.

Heard Sri T. Bala Swami, learned counsel for the applicant and Sri Avinash Desai, learned counsel for the respondent.

Learned counsel for the applicant submits that since the respondent has not responded to the Notice for appointment of an Arbitrator as per Clause No.29 of the Lease Deed dt.04.05.2017, the present Arbitration Application is liable to be allowed.

On the other hand, learned counsel for the respondent contends that the applicant has neither issued any Legal Notice invoking Arbitration Clause contained in Lease Deed dt.04.05.2017, nor resorted to any amicable settlement before filing the present Arbitration Application and, therefore, the present Arbitration Application is not maintainable and the same is liable to be dismissed.

It is to be seen that Clause No.29 of the Lease Deed dt.04.05.2017 reads as follows:

“29. DISPUTE RESOLUTION, GOVERNING LAW, JURISDICTION OF COURT:

a. In the event of any dispute, arising between the parties hereto in respect of this Lease Deed, including disputes concerning its existence, validity or termination, by amicable arrangement and in the spirit of compromise and only if the parties fail to resolve the same by amicable arrangement and compromise within a period of fifteen (15) days of receipt of written notice of the same by the other party, either party can refer the matter to arbitration of a common arbitrator if agreed upon, otherwise two arbitrators one to be appointed by each party and the arbitration will be governed by the Arbitration Act, 1996.

b. Any retired High Court Judge can be appointed as an Arbitrator.

c. The law governing this Lease Deed and the arbitration proceedings shall be Indian Law and the proceedings shall be held at Hyderabad and conducted in English language.

d. The Courts at Hyderabad shall have exclusive jurisdiction.”

Clause No.29 of the Lease Deed dt.04.05.2017 provides for resorting to amicable arrangement in case of any dispute between the parties and if the parties fail to resolve the dispute by amicable arrangement, either party can refer the matter to arbitration. Such an exercise is not undertaken by the applicant before going for an arbitration. Moreso, the so-called Legal Notice dt.13.11.2017 also does not indicate

that the applicant has issued any notice invoking arbitration clause by nominating an Arbitrator for resolution of the dispute.

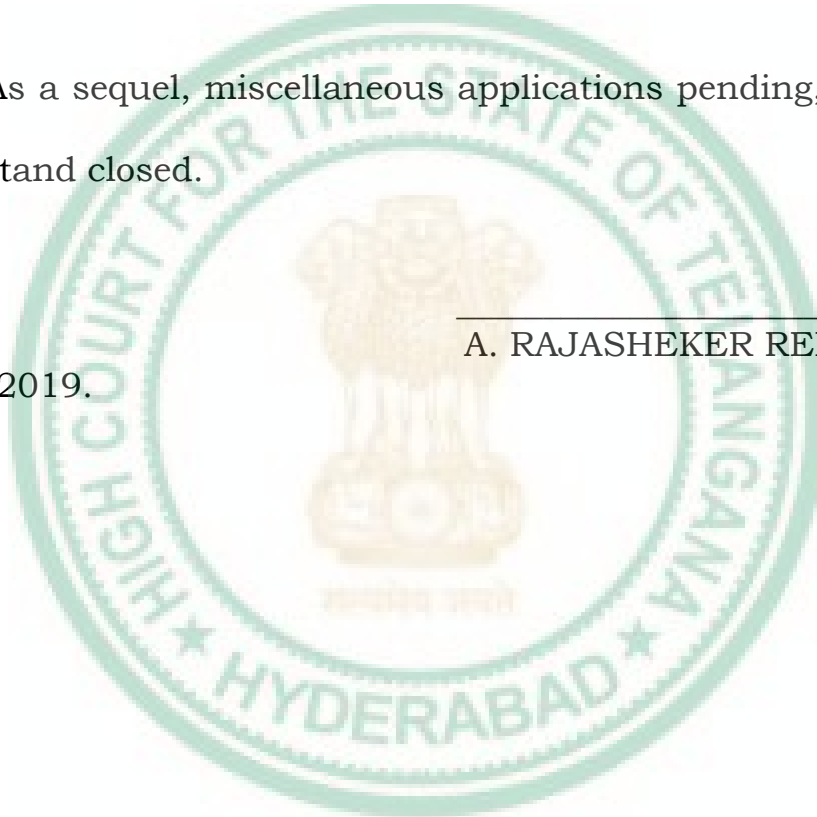
In view of the above, the present Arbitration Application is not maintainable and the same is liable to be dismissed.

Accordingly, this Arbitration Application is dismissed.
No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

31.12.2019.
Msr

A. RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.24 of 2018



31.12.2019
(Msr)